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Honorable Gregory G. Fitch
Executive Director
Alabama Commission on Higher Education
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Alabama Commission on Higher Education –
Resolutions – Instructional Programs – Student
Grant Program

Act 2014-001, a resolution, has no legal effect on
the authority of the Alabama Commission on
Higher Education (“Commission”) to regulate a
non-Alabama institution.

The noncompliance of a non-Alabama institution
with the regulations of the Commission and the
consequent withdrawal of programmatic approval
may, as determined by the executive director of
the Alabama Commission on Higher Education,
compromise the eligibility of the institution to
participate in the Alabama Student Grant
Program.

Dear Dr. Fitch:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

(1) What, if any, force and effect does Act 2014-
001 (“resolution”) have on the authority of the
Alabama Commission on Higher Education to regulate
a non-Alabama institution?

FACTS AND ANALYSIS

In 2014, the Legislature adopted a resolution, signed by the Governor and designated as Act 2014-001, purporting to charter an educational institution as an “educational institution in this State.” 2014 Ala. Acts No. 2014-001. The Commission is mandated “[t]o authorize and regulate instructional programs or units offered by non-Alabama institutions of postsecondary education in the State of Alabama.” ALA. CODE § 16-5-10(14) (Supp. 2014). No such institution may operate within Alabama without the approval of the Commission. *Id.* The Commission may promulgate rules to establish criteria for approval. *Id.*

Pursuant to its rulemaking authority, the Commission has defined a “non-Alabama institution” as “[a] postsecondary educational institution, public or private, profit or nonprofit, whose main campus or headquarters is located outside the State of Alabama.” ALA. ADMIN. CODE r. 300-2-1-.02(2)(f) (2013). In accordance with this definition, the Commission may determine whether an institution is a non-Alabama institution.

It is established law that an administrative body’s interpretation of its authorizing legislation is entitled to great weight. *Ala. Metallurgical Corp. v. Ala. Pub. Serv. Comm’n*, 441 So. 2d 565, 571 (1983). Moreover, the rules, regulations, and general orders of administrative authorities, pursuant to the powers delegated to them, have the force and effect of laws. *McCullar v. Universal Underwriters Life Ins. Co.*, 687 So. 2d 156, 176 (Ala. 1996). As this Office has previously stated, “[t]he Legislature has no power to make or change law by resolution.” Opinion to Honorable Joe McInnes, Director, Alabama Department of Transportation, dated July 28, 2005, A.G. No. 2005-164, *quoting Laidlaw Transit, Inc. v. Ala. Educ. Ass’n*, 769 So. 2d 872 (Ala. 2000).

CONCLUSION

Act 2014-001, a resolution, has no legal effect on the authority of the Alabama Commission on Higher Education to regulate a non-Alabama institution.

QUESTION

(2) Does noncompliance of a non-Alabama institution with the regulations of the Commission and the consequent withdrawal of programmatic approval

compromise the eligibility of an institution for participation in the Alabama Student Grant Program?

FACTS AND ANALYSIS

With respect to your second question, the Alabama Student Grant Program (“Program”) is created by section 16-33A-1, *et seq.*, of the Code. ALA. CODE §§ 16-33A-1 to 16-33A-11 (2012). The purpose of the Program is to provide financial assistance to residents of this state who choose to attend accredited independent colleges and universities. ALA. CODE § 16-33A-2 (2012). The Commission is tasked with the duty to administer the Program. ALA. CODE § 16-33A-4 (2012). The Commission is empowered “to request submission of and ***obtain all information*** reasonably needed for the effective administration of the program from individual applicants for grants or ***from institutions which enroll eligible students.***” ALA. CODE § 16-33A-5(a)(5) (2012) (emphasis added). The Commission may promulgate rules to carry out the provisions and purposes of the Program. ALA. CODE § 16-33A-5(a) (2012).

You have informed us that a non-Alabama institution has not complied with the regulations of the Commission, and the Commission has withdrawn programmatic approval. A non-Alabama institution may not operate in Alabama without the approval of the Commission. ALA. CODE § 16-5-10(14) (Supp. 2014).

Additionally, according to the rules adopted by the Commission, “[e]ach ***approved institution receiving grants*** on behalf of, and to the credit of, any student ***shall be subject to examination at any time by the ACHE***” ALA. ADMIN. CODE r. 300-4-3-.02 (2011) (emphasis added). The Commission may conduct an institutional review of an institution participating in the Program. ALA. ADMIN. CODE r. 300-4-3-.07 (2011). If the institutional review reveals “sufficient problems” pertaining to the Program, the executive director may temporarily suspend grant payments, indefinitely suspend an institution from participation in the Program, and demand repayment of grant funds to remedy any violation of applicable laws, agreements, or operating procedures. ALA. ADMIN. CODE r. 300-4-3-.07(6)(a)-(c) (2011).

Accordingly, if the executive director of the Commission determines via an institutional review that the failure of an institution to comply with the regulations of the Commission and the resulting withdrawal of programmatic approval constitute a “sufficient problem” pertaining to the Program, he or she may impose the remedies set forth in rule 300-4-3-.07(6) of the Administrative

Honorable Gregory G. Fitch
Page 4

Code. An institution may appeal the decision of the executive director to the Commission. ALA. ADMIN. CODE r. 300-4-3-.07(7) (2011).

CONCLUSION

The noncompliance of a non-Alabama institution with the regulations of the Commission and the consequent withdrawal of programmatic approval may, as determined by the executive director of the Alabama Commission on Higher Education, compromise the eligibility of the institution to participate in the Alabama Student Grant Program.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/BB/GWB

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